

DETAILED ACTION

1. The amendment and RCE filed on 04/27/2010 has been entered and fully considered. Claims 17 and 22-27 are pending, of which claim 17 is amended, claims 22-27 are newly added.

Response to Amendment

2. In response to amendment, the examiner establish species election request and modifies rejection over the prior art established in the previous Office action.

Election/Restrictions

3. This application contains claims directed to the following patentably distinct species:

ferric dehydroporphyrin IX (Claims 22, 25, 26),
azure B (Claims 23, 25, 27),
basic blue 41 (Claims 24, 26, 27).

The species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species. In addition, these species are not obvious variants of each other based on the current record.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, Claim 17 is generic.

There is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing

the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

The election of the species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the election of species requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected species.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the species unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other species.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

4. During a telephone conversation with Lisa M. Hemmendinger on 06/14/2010 a provisional election was made without traverse to prosecute the species of Basic blue 41, Claims 24, 26, 27. Affirmation of this election must be made by applicant in replying to this Office action. Claims 22, 23 and 25 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 17, 24, 26 and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The preamble of Claim 17 recites "A dissolution promoter for removing peptide, oligopeptide, polypeptide or protein from fibril or aggregate comprises" merely describes an intended use of the compounds. The preamble does not specifically define the method of using the compounds. Therefore, the preamble is indefinite and carries no weight in limitation of the claim.

Claim Rejections - 35 USC § 102

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. **Claims 17, 24, 26 and 27** are rejected under 35 U.S.C. 102(b) as being anticipated by Capt et al. (US 6,626,963) (Capt).

In regard to Claims 17, 24, 26 and 27, Capt teaches Basic blur 41 as a compound (see col. 6, lines 21). "A dissolution promoter for removing peptide, oligopeptide, polypeptide or protein from fibril or aggregate" recited in Claim 17 is for intended use. Therefore, does not further limit the claims.

Response to Arguments

10. Applicant's arguments, Claim 17 is amended to delete "tannic acid", (see page 2, lines 4), filed on 04/27/2010, with respect to the rejection(s) of claim(s) 17 under Hartsel have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Capt under 35 U.S.C. 102(b).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT XU whose telephone number is (571)270-5560. The examiner can normally be reached on Mon-Thur 7:30am-5:00pm, Fri 7:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vickie Kim can be reached on (571)272-0579. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

6/14/2010

/Yelena G. Gakh/
Primary Examiner, Art Unit 1797

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